

COPY

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF )  
EVANSVILLE, INDIANA, BY ITS WATER )  
AND SEWER UTILITY BOARD, FOR )  
AUTHORITY TO ISSUE BONDS, NOTES, )  
OR OTHER OBLIGATIONS, FOR )  
AUTHORITY TO INCREASE ITS RATES )  
AND CHARGES FOR WATER SERVICE, )  
AND FOR APPROVAL OF NEW )  
SCHEDULES OF WATER RATES, )  
CHARGES, AND RULES AND )  
REGULATIONS FOR WATER SERVICE, )  
AND FOR APPROVAL OF ACCOUNTING )  
AND RATEMAKING TREATMENT FOR )  
WATER SERVICE TO REFLECT THE )  
IMPACT OF REASONABLY FIXED, )  
KNOWN AND MEASUREABLE CAPITAL )  
REQUIREMENTS OVER THE NEXT )  
THREE CALENDAR YEARS. )

**FILED**

FEB 20 2007

INDIANA UTILITY  
REGULATORY COMMISSION

CAUSE NO. 43190

**PRE-FILED DIRECT TESTIMONY OF MICHAEL MOLER**

**PETITIONER'S EXHIBIT MM**

1. Q. Please state your name and describe your employment.  
A. Michael Moler. I am employed by American Water Company, which is the contracted manager of the water system of the Petitioner City of Evansville. Specifically, I oversee the operations and maintenance of the Petitioner's water treatment plant and other facilities. I have been employed in various capacities by the Petitioner or more recently by American Water Company and its predecessor in Petitioner's water system operations for more than two years.
2. Q. Please briefly describe your education and experience pertaining to water production, treatment, distribution, sales and service.  
A. In addition to my work with and for the Petitioner, I have managed water production, water distribution, wastewater, and utility billing departments in other Indiana municipalities. I have also operated surface water and groundwater treatment facilities within the state of Indiana. In August 1998, I received my Bachelor of Science Degree from Indiana Wesleyan University in Marion, Indiana, concentrating in business. I have also completed various courses offered by the American Water Works Association (AWWA). I am certified as a Certified Operator within the State of Indiana with the classification as WT-5 given by the Indiana Department of Environmental Management.
3. Q. What are your primary job duties at present?

- A. I am in charge of and supervise seventeen union hourly employees and three supervisors at Petitioner's water production facility. I provide oversight of daily operations of the water production facility, employee supervision, and general administrative duties to include the preparation and delivery of all state of Indiana required reports. I am an employee of American Water Operations and Maintenance, Inc. pursuant to the Management Agreement between the Petitioner and that company. A copy of that Management Agreement which has been negotiated and becomes effective in March, 2007 is attached as my Exhibit MM-1.
4. Q. In the above capacity have you become familiar with the Petitioner's water rate increase petition which is the subject matter of this proceeding?
- A. Yes. Harry Lawson has informed me of this proceeding and requested me to provide information and testimony. Also, I am familiar with the Petitioner's "Master Plan" and its updating with the professional assistance of HNTB.
5. Q. Have Petitioner's operating expenses increased during the period since its last water rate increase in February, 2004?
- A. Yes. They have substantially increased due to various causes, including an increased demand on our system largely caused by increased growth on the west side of Vanderburgh County where the University of Southern Indiana is located and its student enrollment as dramatically increased to more than ten thousand;

with some of the other factors in increased expenses being stricter, and in some cases new or more closely enforced environmental laws, rules and regulations; changes in our sewer system and its requirements which impact the water side of Petitioner's business; inflation, and the continuing urgent need for repair, replacement, additions and upgrades to Petitioner's system which has components that were originally constructed in the late nineteenth century.

6. Q. Would you give us some specifics concerning the above?

A. Yes. As noted within Harry Lawson's testimony, several INDOT Projects have caused a cash flow problem at present which limits the Petitioner's ability to make much needed capital improvements. The water system has areas that were constructed in the late 1880's and are in urgent need of repair. These older facilities present an ongoing increasing maintenance expense given their present condition to retain and maintain those facilities' capability and ability to perform as they were initially designed and installed. Increased demand on Petitioner's system during the summer months in combination with the above problem has resulted in short periods of time when total actual water treatment capacity in the water treatment facility has not been obtained even at the present reduced capacity of 48 million gallons per day whereas that capacity was, prior to the fairly recent retirement of deficient filters, 60 million gallons of water per day.

7. Q. Has the above, to your knowledge and information, affected the Petitioner's present financial status?

A. Yes. We have experienced a cash availability problem which has delayed much needed maintenance and improvements which are listed in exhibits provided by other of Petitioner's witnesses. This situation must be quickly resolved for Petitioner to be able to continue to provide it customary high level of water production, treatment, distribution, sales and services to its present and future customers. We do expect that customer growth and the demand on our system will continue to grow. Unfortunately, Petitioner is presently behind in its master plan since much needed improvements have been delayed due the problems I have briefly described.

8. Q. From an operations viewpoint, is an increase in water rates necessary for Petitioner to maintain and operate its plant, facilities, equipment and to efficiently provide continued high level service to the public?

A: Yes. A review of the required list of capital improvements that we need to finance and commence construction on yet this year establishes the Petitioner's urgent need. One example is the fact that our daily capacity that was traditionally 60 MGD is now reduced to 48 MGD due to some antiquated filters that do not meet new and tighter industry specifications. We need to replace those filters so that our daily capacity returns to 60 MGD as quickly as

possible but cannot do that without rate and financing relief from the Indiana Utility Regulatory Commission.

9. Q. You previously stated you have some familiarity with the HNTB work on the Petitioner's Master Plan and upgrades to it, is that correct?

A: Yes. I assisted as to operational and maintenance needs and requirements at present and within the foreseeable future.

10. Q. Do you agree with the conclusions and recommendations in the Master Plan as updated as they relate to your capacity as the supervisor of operations and the plant, equipment, facilities and system?

A. Yes, and frankly my preference would be to put several of the much needed capital improvements on a faster track but that will depend on the outcome of this proceeding.

11. Q. Please briefly discuss the nature of some of the urgent improvements needed for Petitioner's water acquisition, production and treatment plant.

A. Our sole water treatment plant is one of the oldest in mid-America having been originally constructed in the late 1800s. Due to age and new technology and processes, it requires near and long-term capital improvements which will likely be phased in over several years for us to continue to meet reliability standards and specifications, increased system demands and heightened regulation from various government entities as well as industry

requirements. Within the next three years, some of the highest priority improvements impact our business and plant/system processes from water intake to the delivery of high quality water to end users or the few wholesalers we serve. Such improvements must be made to the influent raw water facilities, sedimentation basins, chemical feed systems, filters (previously described in part), low and high service pumps, and the aging buildings and grounds.

12. Q. Do you have an estimate of the cost of the needed improvements you have summarized above?

A. Needless to say that with inflation and the ever improving technology available, and the increasingly stringent regulation and environmental controls and requirements, the cost will be substantial. Without getting into line by line specifics as to the cost of specific technologies and related equipment and construction, all of which costs increase on a fairly regular basis, I agree with the cost estimates provided by HNTB and its professional engineers, and the numbers used by the accountants at Umbaugh, which are approximately \$37,400,000. My understanding is that all of this will be corrected as appropriate over time based on the final engineering estimates, bid results, and final construction costs.

13. Q. Are the projects you have described reasonably necessary for Petitioner to continue to provide reasonable and adequate used and useful water utility sales and services to its customers?

A. Yes.

14. Q. Does Petitioner also have required expensive periodic maintenance that involves professional engineer estimates of costs?
- A. Yes.
15. Q. Would you detail some of these periodic maintenance requirements?
- A. Yes. One fairly large item is the periodic maintenance of Petitioner's water storage tanks, particularly the repainting of them periodically as necessary. Other periodic maintenance items are detailed on my attached exhibit marked Exhibit MM-2. Chris Gale and Gary Malone also may address this topic.
16. Q. Have you provided the periodic maintenance information to Umbaugh based on Petitioner's books and records?
- A. Yes.
17. Q. Are the numbers used by witness, Gerald Malone of Umbaugh, in his Pre-filed testimony correct?
- A. Yes.
18. Q. Are Petitioner's production, treatment, equipment, facilities and water system used and useful for the benefit of the public?
- A. Yes.
19. Q. Based on your oversight, knowledge, familiarity and experience of Petitioner's plant, facilities, equipment and water system, do you have an opinion as to the condition of all of those?
20. A. Yes, and my opinion is that at present Petitioner and its employees and contractors have done a good job in maintaining and operating



those in as good or better condition than can reasonably be expected given the age of some of the plant, facilities, equipment and water system, and the present financial condition of the Petitioner, and Petitioner had continued to provide the public with high level water utility sales and service by the fact that Petitioner, to the best of my knowledge, has had very few complaints concerning its water quality or service. Nevertheless, having said that it is extremely important that the much needed and delayed capital improvement projects be authorized and implemented as quickly as possible for Petitioner to continue to provide good water utility sales and service.

21. Q. Does this conclude your direct testimony at this time?

A. Yes.

## Periodic Maintenance

### I. Pump Maintenance

		<u>Date Rebuilt</u>	<u>Last Total</u>	<u>Next Rebuild</u>	<u>Annual Maint. Cost</u>
A. High Service Pumps					
# 8	Rebuild Needed, estimate		\$60,000.00	2008	\$2,000.00
# 9		2002	\$58,558.12		\$2,000.00
# 10	Rebuild Needed, estimate		\$60,000.00	2009	\$2,000.00
B. Low Service Pumps					
# 1		2001	\$40,190.00		\$3,000.00
# 2		2001	\$40,230.00		\$3,000.00
# 3		2004	\$41,081.00		\$3,000.00
# 4		2000	\$40,998.00		\$3,000.00
# 5		1998	\$41,046.00		\$3,000.00
# 6		2003	\$41,380.00		\$3,000.00

### II. Filter Media

	<u>Date Replaced</u>	<u>Last Cost/Filter</u>	<u>Next Replacement</u>	<u>Cost/Filter</u>
#13 Filter	2000	\$5,335.00		
#14 Filter	2000	\$5,335.00		
#15 Filter	2000	\$5,335.00		
#16 Filter	2000	\$5,335.00		
#17 Filter	2000	\$5,335.00		
#18 Filter	2001	\$5,335.00		
#19 Filter	2001	\$5,335.00		
#20 Filter	2001	\$5,335.00		
#21 Filter			2008	\$7,000.00
#22 Filter			2008	\$7,000.00
#23 Filter			2008	\$7,000.00
#24 Filter			2008	\$7,000.00
#25 Filter			2008	\$7,000.00
#26 Filter			2008	\$7,000.00
#27 Filter			2008	\$7,000.00
#28 Filter	2001	\$5,335.00		
#29 Filter			2008	\$7,000.00
#30 Filter			2008	\$7,000.00
#31 Filter			2008	\$7,000.00
#32 Filter			2008	\$7,000.00
#33 Filter			2008	\$7,000.00
#34 Filter			2008	\$7,000.00

## Periodic Maintenance Continued

### III. Booster Stations

			<u>Annual</u>
A. Lincoln Station	( in city limits )	3 pumps	\$5,000.00
B. Old Boonville Station	( in city limits )	1 pump	\$1,000.00
C. Weinbach Station	( in city limits )	2 pumps	\$1,000.00
D. Stallings Station	( in city limits )	3 pumps	\$6,000.00
E. Campground Station	( in city limits )	2 pumps	\$4,000.00
F. First Ave. Station	( in city limits )	2 pumps	\$1,000.00
G. Killian Station	( in city limits )	4 pumps	\$6,000.00
H. Barker Station	( in city limits )	2 pumps	\$1,000.00

### IV. Tank Maintenance

		<u>Last Total</u>	<u>Next Inspection &amp; Cost</u>
A. Lincoln Ave. Tank	( 500,000 Gal. ) ( in city limits )	\$234,115.00	2012 \$4,000.00
Repaired and Repainted 1991			
B. Volkman Tank	( 1,500,000 Gal. ) ( OUT of city limits )	\$750,000.00	2011 \$5,000.00
Built 1999 To repair and paint estimate			
C. Darmstadt Tank	( 1,000,000 Gal. ) ( OUT of city limits )	\$463,047.50	2008 \$5,000.00
Repaired and Repainted 2003			
D. Campground Reservoir ( 20,000,000 Gal. ) ( in city limits )		\$14,588.00	2010 \$6,000.00
Seal Reservoir 1994			
E. Killian Reservoir	( 4,000,000 Gal. ) ( in city limits )	\$456,147.25	2009 \$6,000.00
Repaired and Repainted 1997			
F. Upper Mt. Vernon Tank ( 500,000 Gal. ) ( OUT of city limits )		\$250,000.00	2008 \$4,000.00
To repair and paint estimate			
G. Grimm Rd. Tank	( 500,000 Gal. ) ( OUT of city limits )	\$194,627.00	2009 \$4,000.00
Repaired and Repainted 1997			

## Periodic Maintenance Continued

### V. Traveling Screens Maintenance

	<u>Date Rebuilt</u>	<u>Last Total</u>	<u>Next Rebuild</u>	<u>Annual</u>
# 1 Screen	1999	\$43,750.00	2011	\$2,000.00
# 2 Screen	1996	\$41,650.00	2008	\$2,000.00
# 3 Screen	2002	\$46,889.00	2014	\$2,000.00

**FILED**

**FEB 20 2007**

**INDIANA UTILITY  
REGULATORY COMMISSION**

**Execution Copy**

# **MANAGEMENT AGREEMENT**

by and between

**THE CITY OF EVANSVILLE AND  
AMERICAN WATER OPERATIONS AND  
MAINTENANCE, INC.**

**Dated as of March 3, 2007**

**EXHIBIT MM-1**

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## MANAGEMENT AGREEMENT

This Agreement, made effective as of the 3rd day of March, 2007, by and between the City of Evansville, a municipal corporation in the County of Vanderburgh, State of Indiana, represented by its Water & Sewer Utility Board (the "City"), and American Water Operations and Maintenance, Inc. (hereinafter "AW") a Texas Corporation with its principal place of business at 1025 Laurel Oak Road, Voorhees, New Jersey 08043.

WHEREAS: The City owns, leases and contracts for the operation and maintenance of certain land, buildings, and equipment which include but are not limited to, a water treatment facility and a water distribution system, (hereinafter "Facilities"); and

WHEREAS: The City desires to contract with AW to provide operation, maintenance and management services for the Facilities, all as more specifically set forth herein below; and

WHEREAS: AW desires to provide the services to the City, subject to the terms and conditions contained herein below; and

WHEREAS: The City has authority under the law of the State of Indiana to enter into a service contract for the operation, maintenance, and management of said Facilities.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties hereto agree as follows:

### ARTICLE 1.

#### DEFINITIONS

Capitalized terms in this Agreement shall have the following meanings:

"Agreement" means this Management Agreement dated as of March 3, 2007 by and between the City and AW, as amended from time to time.

"Applicable Law" means any federal, state or local statute, local charter provision, regulation, ordinance, rule, mandate, order, decree, permit, code or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either party under this Agreement, which includes, without limitation, the extent to which the foregoing pertain to the provision of the Basic Services.

"AW" means American Water Operations and Maintenance, Inc., its successors and assigns.

"AW Employees" means those employees identified in Appendix C attached hereto.

"Base Compensation" means the monthly amount paid to AW pursuant to Section 6.1 of this Agreement.

"Basic Services" means the services set forth in Section 5.1 of this Agreement.

"Capital Improvement" means new equipment (accessory, appurtenances, or components thereof), or new structures (as opposed to replacements of, repairs to or renovations of existing structures) which: (i) significantly increase the Facilities' efficiency and/or capacity; (ii) have a service life of at least 10 years; and (iii) costs in excess of Five Thousand Dollars (\$5,000) exclusive of AW labor.

"Change in Law" means the enactment, adoption, amendment, promulgation, issuance, modification, repeal or change of any Applicable Law that takes effect on or after the Commencement Date.

"Change in Scope" shall have the meaning set forth in Section 6.4.

"City" means the City of Evansville, Indiana, represented by its Water & Sewer Utility Board, its successors and assigns.

"Commencement Date" means March 3, 2007.

"Contract Year" means the twelve (12) month period commencing on the Commencement Date and the successive twelve (12) month periods thereafter during the Term of this Agreement.

"Facilities" means collectively the Water Plant and Water Distribution System described in Appendix B hereto.

"Maintenance" means those routine and/or repetitive activities, including preventative and predictive activities, required or recommended by the equipment manufacturer, by AW or by Prudent Industry Practices to maximize the service life of the equipment, vehicles and structures of the Facilities or components thereof.

"Management Fee" means that portion of the Base Compensation paid to AW for performing the Basic Services.

"Minor Maintenance and Repair" shall have the meaning set forth in Appendix A.

"Minor Maintenance and Repair Allocation" means the allocation established and maintained pursuant to Appendix A.

"Material Change in Cost" shall mean any increase or decrease in cost to AW of providing the Basic Services in the amount of 10% or more of the Base Fee in the aggregate.

"New Service Equipment Allocation" means the allocation for each Contract Year for the payment of new service expenses which AW is required to pay pursuant to Section 5.4 hereof. The New Service Equipment Allocation for Contract Year 1 is \$997,834.

"New Service Equipment" means water meter replacements and main line extensions and associated appurtenances.

"Parts and Supplies" means the equipment, tools, materials, consumable and expendable supplies, and spare parts at the Facilities.

"Prudent Industry Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the water treatment industry during the Term of this Agreement. Prudent Industry Practices are not to be interpreted, construed as or limited to the optimum industry practices, methods or acts, but rather as a range of acceptable practices, methods or acts consistent with the duties and obligations of AW under this Agreement.

"Repair(s)" means those non-routine/non-repetitive activities required for operational continuity, safety and performance, generally due to failure or to avert a failure of the equipment, vehicles or facilities structures of the Facilities or some components thereof.

"Repair and Replacement" shall have the meaning set forth in Appendix A.

"Repair and Replacement Allocation" means the account established and maintained pursuant to Appendix A.

"State" means the State of Indiana.

"Term" means the term of this Agreement as set forth in Article 2 hereof.

"Uncontrollable Circumstance" means any act, event, condition or circumstance that (1) is beyond the reasonable control of the party relying thereon as justification for not performing an obligation of such party under this Agreement, (2) adversely affects, interferes with or delays the party's ability to perform its obligations under this Agreement, expands the scope of the party's obligations under this Agreement, or increases the party's cost of performing its obligations under this Agreement, and (3) is not the result of the willful or negligent act, intentional misconduct, or breach of this agreement by the party claiming the occurrence of an Uncontrollable Circumstance.

Subject to clauses (2) and (3) above, an Uncontrollable Circumstance shall include, but not be limited to, the following:

- (a) a Change in Law;
- (b) any injunction or similar order issued by a governmental or regulatory body;
- (c) the existence of a concealed or latent environmental condition on the Facilities site prior to March 3, 1997;

- (d) contamination of the Facilities site from groundwater, soil or airborne substances migrating from sources outside of the Facilities site;
- (e) naturally-occurring events such as earthquakes, hurricanes, tornadoes, floods, fires, landslides, underground movement, lightning, epidemics and other acts of nature;
- (f) war, terrorism, explosion, sabotage, extortion, blockade, insurrection, riot, civil disturbance or acts of a declared public enemy;
- (g) labor disputes, except labor disputes involving employees of AW;
- (h) the failure of any subcontractor of a party to furnish services, materials, chemicals, equipment or otherwise perform its contractual obligations to the party, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the party directly;
- (i) the failure of any governmental body or private utility having operational jurisdiction in the area in which the Facilities are located to provide and maintain utility services (including gas, water, sewer, electric, telephone and telecommunications) to the project.
- (j) the failure of title to the Facilities or the placement of any encumbrance of the Facilities;
- (k) any breach by a party (other than the party claiming the occurrence of an Uncontrollable Circumstance) of its representations, warranties and covenants as set forth in this agreement;
- (l) any failure, non-performance or non-compliance by a party (other than the party claiming the occurrence of an Uncontrollable Circumstance) with respect to its obligations and responsibilities under this agreement;
- (m) the action of any third party over whom the party does not have control; or
- (n) vacancy(ies) in Union employee position(s) that materially affect AW's ability to meet its performance standards.

"Union Employees" mean those employees whose positions are identified on Appendix D as union employees.

"Water Distribution System" means the water distribution system described in Appendix B hereto.

"Water Plant" means the water plant described in Appendix B hereto.

## ARTICLE 2. TERM

### 2.1 Initial Term

This Agreement is effective as of the day and year first written above. The Term of this Agreement will begin on the Commencement Date and will continue for a period of five (5) years.

## 2.2 Term Extensions

This Agreement may be extended by mutual agreement of the parties for any number of additional five year or longer terms under the terms and conditions stated in this Agreement subject to the City and AW negotiating a mutually acceptable Base Fee. The extension period will commence on the day following the expiration of the original Term of this Agreement. Exercise of this option must be done in writing within one hundred twenty (120) days prior to the expiration of the initial Term, or any term extension, of this Agreement.

## **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF AW**

### 3.1 Corporate Status

AW is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and is qualified to do business in the State of Indiana under the name of American Water Operations and Maintenance, Inc. AW has the full corporate power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Agreement.

### 3.2 Enforceability

This Agreement is a legal, valid, and binding obligation of AW, enforceable against AW in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law affecting creditors' rights and remedies and subject to the exercise of judicial discretion in accordance with general principles of equity.

### 3.3 Inspection of Facilities

AW represents that it has carefully inspected and investigated the existing Facilities and is familiar with the responsibilities, services, and obligations required by this Agreement.

### 3.4 Disputes and Litigation

There is no material claim, litigation, government proceeding, or investigation pending against AW which could adversely affect its ability to fulfill its obligations under this Agreement. AW is not subject to any judgment, order, writ, injunction, or decree which conflicts with this Agreement.

### 3.5 Ability to Perform

The existing obligations and commitments of AW do not conflict with this Agreement and do not adversely affect its ability to fulfill its obligations under this Agreement.

### 3.6 Authorization

The execution and delivery of this Agreement and the performance of the services contemplated herein have been fully authorized and approved by all requisite corporate actions of AW.

**ARTICLE 4.**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY**

**4.1 Political Status**

The City is a municipal corporation organized and existing under the laws of the State.

**4.2 Enforceability**

The City has all necessary power and authority to enter into and perform its duties under this Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights and remedies and subject to the exercise of judicial discretion in accordance with general principles of equity.

**4.3 The Facilities**

The City will not dispose of or modify its interest in any of the Facilities without the prior written consent of AW.

**4.4 Liens**

The City will keep the Facilities free of all liens and encumbrances during the term of this Agreement which may directly or indirectly interfere with AW' performance of its obligations hereunder.

**4.5 Compliance with Applicable Law**

The Facilities' operation and maintenance currently comply with all Applicable Laws and neither the City nor the Facilities are subject to a court or administrative order with respect to the operation and maintenance of the Facilities. To the best of the City's knowledge, there is no reason to believe that the operation of the Facilities will not be able to continue to be in full compliance with all Applicable Laws.

**4.6 Rates**

The City agrees to petition the Indiana Utility Regulatory Commission for rates sufficient to raise the revenues necessary to meet its obligations hereunder, including, without limitation, payment of the Base Fee.

**4.7 Disputes and Litigation**

There is no material claim, litigation, government proceeding, or investigation pending against the City which could adversely affect its ability to fulfill its obligations under this Agreement. The City is not subject to any judgment, order, writ, injunction or decree which conflicts with this Agreement.

**4.8 Ability to Perform**

The existing obligations and commitments of the City do not conflict with this Agreement and do not adversely affect its ability to fulfill its obligations under this Agreement.

#### 4.9 Authorization

The execution and delivery of this Agreement and the performance of the services contemplated herein have been fully authorized and approved by all requisite actions of the City.

### **ARTICLE 5. RESPONSIBILITIES OF AW**

#### 5.1 Basic Services

Throughout the Term of this Agreement, AW shall operate and maintain the Facilities on a twenty-four (24) hours per day, seven (7) days per week basis in accordance with Applicable Law and Prudent Industry Practices, as well as the City's written operation and maintenance manuals provided to AW, in order to achieve the operating objectives and specific services set out in Appendix "A" attached hereto, as may be amended from time to time by mutual agreement of the parties (the "Basic Services").

#### 5.2 Expenses

AW shall be required to pay for those costs and expenses for Basic Services that are necessary for the normal operation and maintenance of the Facilities including, but not limited to, personnel costs of AW employees, services, materials, and purchase orders for Parts and Supplies let during the Term of the Agreement or incurred during the Agreement.

Examples of items not paid for by AW include, but are not limited to, the following:

- Costs related to Change in Scope of services;
- Individual Maintenance and Repairs for which the City is responsible as defined herein;
- Capital Improvement expenditures as defined herein;
- Damages resulting from the City's failure to make Capital Improvements recommended by AW that are justified in writing as part of AW's 1 and 5 year Capital Improvement programs and are reasonably necessary to improve and upkeep the Facility in compliance with all Applicable Laws and Prudent Industry Practice in accordance with Section 7.2;
- Repair of any defects or flaws in the Facilities;
- Damages caused by any defects or flaws in the Facilities if the City fails to authorize appropriate corrections after the City is on notice of such defects or flaws;
- Spills or runoff into the Ohio River which cannot be traced to a source polluter. In those cases, the City and AW will negotiate in good faith to make appropriate adjustments based on the actual costs incurred as a result of the incident that are over and above the normal operating costs.

#### 5.3 Negotiation of Contracts

The City shall inform AW of any agreements to be signed by the City relating to the operation and maintenance and Capital Improvements of the Facilities or the City's interest in the

Facilities. At the City's request, AW will assist and/or negotiate, and recommend the passage of such agreements. No agreements will be signed by the City which affect AW's services at the Facilities without review and comment by AW. Final approval will be at the City's discretion.

#### 5.4 New Services

AW will charge the City unit prices for all New Services Equipment as specified in Appendix G. These charges will apply against the New Service Equipment Allocation. Within thirty (30) days after the close of each Contract Year, AW will present a full accounting of both the amount and cost of all New Service Equipment that was installed within that Contract Year. The City will be responsible for all amounts in excess of the New Service Equipment Allocation within a Contract Year, and shall reimburse AW for such excess within sixty (60) days of the end of a Contract Year. Any New Service Equipment Allocation funds not spent will be refunded in full to the City within sixty (60) days of the end of a Contract Year.

The unit prices in Appendix G will be updated for each Contract Year.

For each New Services Equipment project AW will present to the City an opinion of probable cost ("OPC"). The OPC shall contain at a minimum:

- Project Description including schedule and location;
- Material quantity
- Size
- Contract Labor
- Unit prices
- AW overhead estimate (based on 15% of direct cost); and
- AW administrative fee (based on 10% of direct cost plus overhead).

The OPC shall be reviewed with the City and agreed to by both parties prior to project commencement. Each project schedule shall be tracked and AW shall provide reporting as agreed to by the parties.

#### 5.5 AW Employees

- A. AW's management employees are listed on the organization chart attached hereto as Appendix C. This appendix shall be updated from time to time as needed to reflect changes in employment.
- B. AW will give employment preference to local labor to the extent that local residents are available and qualified. However, this paragraph does not apply to require AW to give local preference to the positions of managers.
- C. AW will comply with Applicable Law with respect to the hiring and promotion of minorities, disadvantaged business enterprises and subcontractor wage rate provisions, as applicable. AW will be responsible for the supervision of AW Employees and all personnel actions with respect to an AW will be carried out in accordance with AW personnel policy and any Applicable Law. AW waives, with respect to the City, any



rights of subrogation relating to worker's compensation claims filed by AW Employees.

- D. AW will implement its drug and alcohol policy with respect to AW Employees.

#### 5.6 Employee Qualifications and Certifications

AW will provide a sufficient number of qualified, capable, and experienced personnel who meet relevant State of Indiana requirements and certifications regarding operation of the Facilities.

#### 5.7 Union Employees

AW will manage and train the Union Employees using its expertise and industry standards to provide the City water services in accordance with the terms of this Agreement. AW will supervise and manage Union Employees and will use its best efforts to comply with the terms of the existing union contract for the Union Employees. AW will produce standard operating procedures with which the Union Employees will be expected to comply. A copy of these standard operating procedures will be provided to the City. AW will cooperate with the City in connection with any grievance filed by the union representing the Union Employees. The City waives with respect to AW any rights of subrogation relating to worker's compensation claims filed by Union Employees.

#### 5.8 AW Access

AW will have unrestricted access to, and the right to use, all of the Facilities at all times during the Term of this Agreement. AW's right to use of the Facilities includes the right to use all equipment and vehicles located at the Facilities as of the Commencement Date. The equipment and vehicles to be at the Facilities on the Commencement Date are identified in Appendix B. AW will use the equipment and vehicles in a responsible manner and for their intended purposes. Within thirty (30) days of the end of each Contract Year, AW will notify the City of the equipment and vehicles which will require replacement during the succeeding Contract Year, and the City shall provide AW with a schedule for the replacement of the equipment and vehicles during such Contract Year.

#### 5.9 Change in Applicable Law

AW will keep the City apprised of changes and proposed changes in Applicable Law and inform the City of needed changes to insure compliance.

#### 5.10 Reporting to the City

- A. AW will submit monthly reports by the 15th day of each month to the City in accordance with the mutually agreed to format including, but not limited to:
- Records of Maintenance and Repairs performed during the previous month. This report will consist of a description of the Parts and Supplies purchased, the cost, date purchased, and brief explanation of the reason for the repair. AW will allow the City, at City's discretion,

to verify these expenditures by providing source documents for City's review.

- Records of New Services expenditures made during the previous month. AW will allow the City, at the City's discretion, to verify these expenditures by providing source documents for the City's review.
  - Records of electricity, natural gas, and chemical usage and expenditures made during the previous month. AW will allow the City, at the City's discretion, to verify these expenditures by providing source documents for the City's review.
  - Meter Installation Program.
  - Accounting of all customer service queries and complaints and responses made during the previous month.
  - Accounting of all security personnel compliance issues.
  - DMR and MRO reports for submittal to IDEM, and monthly pumpage reports.
- B. AW shall provide the City on a weekly basis payroll source document records so that the City may process the payroll for those City employees who are under AW' management supervision.
- C. AW shall provide on an annual basis by March 1 of each year, formal reports to the City on projection of capital needs, and assist the City with the preparation of annual budgets.
- D. Additionally, AW shall provide to the City a list of items which it believes the City should discuss at each staff meeting.

#### 5.11 Records

- A. Records of Operation. AW will maintain necessary and sufficient records of operation and maintenance activities to comply with Applicable Law. These records will be the property of the City. AW will maintain these records at appropriate locations and make them available for use by authorized City personnel.
- B. Accounting Records. AW will maintain accounting records relating to the Facilities using accounting practices which conform to generally accepted accounting principles and requirements of the Indiana State Board of Accounts and the Indiana Utility Regulatory Commission.

#### 5.12 Capital Requests

AW will submit annually recommended 1 and 5 year Capital Improvement programs. AW will provide documentation supporting these requests and preliminary cost estimates. Ultimate approval authority for all capital requests will be the City's. The City shall be responsible for payment of all Capital Improvements.

#### 5.13 Utilities and Chemicals

- A. AW will be responsible for obtaining and paying for electricity, natural gas, and chemicals out of allocation amounts to be determined by the parties for each Contract Year. The allocation amounts for Year 1 will be as follows:
- Electricity: \$ 900,000
- Natural Gas: \$ 47,700
- Chemicals: \$ 1,024,023
- B. Within thirty (30) days after the close of each quarter of each Contract Year, AW will provide the City with a summary of the cost of the electricity, natural gas and chemicals consumed in the operation and maintenance of the Facilities for such quarter. Within sixty (60) days after the close of each quarter of each Contract Year, AW will pay the City one hundred percent (100%) of the amount, if any, by which the electricity, natural gas and chemicals for such quarter are below allocated amounts. Within sixty (60) days after the close of each quarter of each Contract Year the City will pay AW one hundred percent (100%) of the amounts, if any, by which the electricity, natural gas and chemicals for such quarter exceed the allocated amounts.
- C. Chemical and Electrical Adjustment. After new meters are installed at the Facility, the parties will measure an efficiency standard to which AW will be held. The efficiency standard shall be determined over a one year period. Parameters shall be established and agreed to by both parties by reference to kilowatt hours consumed per million gallons of water treated and chemical dosages, or such other items to which the parties agree. These parameters shall assure AW will make efficient use of chemicals and electricity. After the performance standards have been established, AW shall perform an annual reconciliation that will compare the actual usage with the performance standard. Notwithstanding the quarterly accounting above in subsection B., any overages not attributable to demand, raw water quality, or to capital projects that are recommended by AW and agreed to by the City but not completed, shall be the responsibility of AW and shall be reconciled annually. Any savings shall be shared by AW and the City at a rate of 50% each.
- D. Baseline Influent Flow. The following data is to be used by the City and AW for the purposes of establishing a benchmark for the Facilities:
- |                              |        |
|------------------------------|--------|
| Average Annual Influent Flow | 33 MGD |
|------------------------------|--------|
- E. In no event shall the City be responsible for the payment of any late fees incurred pursuant to this section.

#### 5.14 Guarantee of Service Excellence

AW's operation of the Water System will provide complete City satisfaction by performing the following:

- AW shall change 5,500 water meters per year;
- AW shall test all industrial meters at least once every four years;
- AW shall reroute the meter reading routes to produce an average rate per technician of at least 350 meters read per business day;
- AW shall inspect the interior of all elevated tanks once every five (5) years;
- AW shall maintain a flushing program that at a minimum flushes all dead end line at least annually;
- AW shall inspect all fire hydrants at least once annually;
- AW shall paint all fire hydrants at least once every five (5) years;
- AW shall respond substantively in writing, or by documented phone contact, to one hundred percent (100%) of all customer service queries and complaints by the end of the following business day. AW shall additionally have a plan for resolution of such queries or complaints within two (2) business days of receipt of same.

If AW fails to meet the above Guarantee of Service Excellence goals, the City may terminate this Agreement in accordance with section 11.1. If AW fails to meet the last goal with respect to customer service, it shall pay to the City an amount of \$500.00 per violation.

#### 5.15 Housekeeping and Grounds Maintenance

AW will be responsible for performing all grass mowing, trimming, or other maintenance of the Facilities. AW will maintain the interior and exterior of the Facilities in a clean and orderly fashion consistent with other comparable facilities.

The parties recognize that certain facilities used by AW in providing the services are also shared with the contract operator for the wastewater system (the "Wastewater Operator"), which provides services to the City pursuant to a separate agreement. The parties agree that the cost of the following items at the shared facilities should be a shared expense between AW and the Wastewater Operator (the "Shared Expenses"):

- Building and Grounds maintenance up-keep for Allens Lane Facility
- Janitorial supplies
- Telephone (long distance and local)
- Electric and natural gas

Therefore, AW will continue to pay the full amount of the Shared Expenses throughout each Contract Year, and the City will facilitate reimbursement to AW of the amounts due for the Wastewater Operator's portion of the Shared Expenses. Within thirty (30) days after the close of each Contract Year, AW will provide the City with a summary of the Shared Expenses for the prior Contract Year. Within sixty (60) days after the close of each Contract Year, the City will provide this summary to the Wastewater Operator and request that the Wastewater Operator pay AW fifty percent (50%) of the amount of such Shared Expenses. The City will make all good faith efforts to assure that the Wastewater Operator provides such reimbursement to AW within a

reasonable time, however, the City shall not be liable to AW directly for any portion of the Shared Expenses.

#### 5.16 Warranties and Guarantees

AW will maintain manufacturers' warranties on new equipment installed at the Facilities and, to the extent permitted by the terms of the warranties, enforce existing equipment and structure warranties and guarantees. AW will operate and maintain equipment in conformance with manufacturers' recommendations and accepted standard operating procedures.

#### 5.17 Inventory

AW agrees to maintain an adequate spare parts inventory for proper Maintenance and Repair of the Facilities. AW also agrees to maintain the City's Fixed Asset Inventory.

#### 5.18 Fines

- A. AW will be responsible and liable for penalties or fines, without any dollar limit, which may be imposed by the USEPA, IDEM, or any other regulatory agency having jurisdiction over water quality violations resulting from AW's negligence. AW will not be liable, however, if it can justify by appropriate documentation and evidence that the water quality violations occurred as a result of the causes cited in Appendix A, or other causes due to Uncontrollable Circumstances.
- B. AW will also be responsible for fines or penalties imposed by USEPA, IDEM, or any other regulatory agency for failure to comply with the terms and conditions of any duly authorized permit or Applicable Law, unless resulting from an Uncontrollable Circumstance, during the Term of this Agreement.

#### 5.19 Purchasing Policies

AW agrees that all purchases will be made in conformance with the City's MBE/WBE purchasing policies as set forth in Appendix I attached hereto, and with Applicable Law.

#### 5.20 Safety

AW shall plan and implement all aspects of worker safety in managing the operation of the Facilities. AW shall notify the City of the need for Capital Improvements in order to comply with Applicable Law regarding worker safety, the implementation of which shall be in the sole discretion of the City.

#### 5.21 Training

- A. On an annual basis, AW will implement and review training programs for employees to keep skill and knowledge levels current. AW shall maintain all management personnel certification programs and implement new programs as required by Applicable Law.
- B. AW will update and maintain training manuals where appropriate. Additionally, AW will encourage and provide reasonable financial support

for management, supervisory employees and representatives of the City to remain active and current on developments in the field of management and operation of municipal water Facilities. This will include extending invitations to AW internal training programs at no additional cost to the City. AW will not, however, be obligated to pay the cost of any external training programs for such City personnel or representatives.

- C. AW shall maintain and keep current a full and specific Emergency Response Plan (ERP) covering all areas of Facilities operation. This will provide effective planning for all emergencies, including minimizing the detrimental effects of any structural or mechanical failures and natural disasters. At all times, a copy of the latest update for the ERP shall be kept in one central location and be made available to the City upon request.
- D. All licensed operators and distribution field personnel will receive sufficient training hours in accordance with the State of Indiana requirements to maintain compliance with all Applicable Law. All other divisions of Facilities personnel will receive a minimum of eight (8) hours training annually on the following subjects (and such other training as applicable) based on their exposure to the areas that may apply to their work descriptions:
  - a) Communicating hazardous chemicals;
  - b) Electrical hazards and accident prevention;
  - c) Fire extinguishers in the work place;
  - d) Fire hazards and emergency procedures;
  - e) First Aid and CPR;
  - f) Hazardous waste operations and response to chemical spills;
  - g) Lockout/tag out procedures;
  - h) Permit confined space entry procedures;
  - i) Respirator use and limitations of SCBA equipment; and
  - j) Powered forklift operations.
- E. All Customer Service representatives will receive a minimum of sixteen (16) hours training annually.

#### 5.22 Liaison

AW will assist the City in representing the City and AW's interest in regards to matters involving regulatory agencies. The City will be informed of all meetings, hearings, and other relevant information. The City will be entitled to participate in any of the above.

#### 5.23 City Access

AW will allow twenty-four (24) hour per day access to the Facilities for authorized City personnel. Visits may be made at any time by any authorized City personnel. Keys for the Facilities will be provided to the City by AW. All visitors to the project will be required to comply with AWs' operating and safety procedures. All operating, maintenance, and other records or reports covered by this Agreement will be accessible to authorized City and regulatory agency personnel during normal business hours.

#### 5.24 Computerization

AW will maintain computerized software management systems as appropriate. AW agrees to provide the City with access to the system during the term of the Agreement. AW further agrees to provide the City with all passwords and other information necessary to operate the system upon termination of this Agreement.

#### 5.25 Technical Support

AW will provide on call, backup personnel knowledgeable in process control, management, and maintenance necessary to insure compliance with the Agreement. This support will not constitute a claim for additional compensation by AW.

#### 5.26 AW's Insurance Requirements

AW will maintain the following insurance during the term of this Agreement:

Commercial General Liability:

Bodily Injury and Property Damage	\$1,000,000 Occurrence \$1,000,000 Aggregate
Personal Injury Liability	\$1,000,000

*The policy will add the City as an Additional Insured.*

Commercial Automobile Liability:

Hired and Non-Owned Liability	\$1,000,000 Per Accident
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Workers Compensation:

Statutory

Employers Liability:

Bodily Injury By Accident	\$500,000 Each Accident
Bodily Injury By Disease	\$500,000 Policy Limit
Bodily Injury By Disease	\$500,000 Each Employee

Umbrella:

Bodily Injury and Property Damage	\$10,000,000 Aggregate
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AW will furnish the City with a Certificate of such insurance, and each policy will require a 30-day notice of cancellation or material change to be given to the City while this Agreement is in effect. These policies will be in effect at the time AW and the City execute this Agreement.

#### 5.27 Performance Bond

AW will provide to the City an acceptable Performance Bond in the amount equal to ten (10) percent of the first years' compensation and maintain such coverage for the term of this Agreement unless otherwise agreed to by both the City and AW. The Bonding Company will be

rated at least A-10 and will be licensed to do business in the State of Indiana. This section will not be deemed a limitation on AW's liability or responsibility under this Agreement.

#### 5.28 Liens

AW will make payment promptly as due to persons supplying services or materials for the prosecution of the work under this Agreement. AW will not permit any lien or claim to be filed or prosecuted against the City on account of labor or materials furnished. AW will indemnify and hold the City harmless for AW's failure to pay AW's creditors for obligations arising out of AW's operation or maintenance of the Facilities.

#### 5.29 Security

AW shall be responsible for supervising and maintaining the security of the Facilities through third parties in accordance with those third parties' agreements with the City. Such supervision and maintenance shall consist of assuring that the contractors are in compliance with the City's contracts. AW shall promptly notify the City of any incident of non-compliance by such contractors which it is unable to resolve within a reasonable time, and shall report to the City any and all incidents of non-compliance by such contractors on a monthly basis.

The City is responsible for paying for such third party services.

### **ARTICLE 6. COMPENSATION**

#### 6.1 Base Compensation

The City will pay AW a monthly compensation of \$513,635.66, which shall include the Management Fee and allocations for natural gas, electric, chemicals and New Services. The Base Compensation will be due and payable on the fifteenth (15th) day of the month following the month in which the Commencement Date occurs and the fifteenth (15th) day of each month thereafter throughout the Term of this Agreement. AW will deliver to the City an invoice and a signed claim form by the first day of each month in order to receive payment on the fifteenth day of the month.

Notwithstanding any provision of the Agreement to the contrary, in each annual period during the term of the Agreement, at least 50% of the aggregate compensation paid to AW shall be at a stated dollar amount for services rendered for a specific period of time. Notwithstanding any provision of the Agreement to the contrary, those portions of AW's compensation which are variable and not paid at a stated dollar amount for services rendered for a specific period of time shall not exceed 50% of the aggregate compensation paid to AW in any annual period during the term of the Agreement. To the extent that any provision of the Agreement requires the City to reimburse AW for actual and direct expenses paid by AW to any unrelated party, such reimbursement shall not be considered compensation for purposes of the foregoing compensation limitations.



## 6.2 Adjustment to Base Compensation

On each anniversary date, the total Base Compensation amount (less allocation for gas, electric and chemical expenses) will be adjusted at a rate equal to the lesser of (a) the percentage change during the preceding Contract Year in the Consumer Price Index for North Central Urban for "C" Cities (CPI), as published by the U.S. Department of Labor (Bureau of Labor Statistics) or (b) increase of 5%. Such increase shall not be less than 3% of the total compensation paid in the immediate preceding Contract Year. Adjustments made for electricity, natural gas and chemicals will not be subject to, or additive-to, computations of the CPI formula using the CPI. Annual Base Compensation adjustments will be cumulative. An example of this computation is provided in Appendix "H" attached hereto.

## 6.3 City's Source of Payment for Base Compensation

Payment by the City of the Base Compensation shall be made solely from revenues of the City's Facilities. Further, payment of the Base Compensation which represents New Service Equipment Allocation shall be made only from the Net Revenues (defined as the amount of revenues derived from the operation of the Facilities above the amount of revenue to pay the cost of operation, repair and maintenance) of the Facilities, after and junior and subordinate to the payment of all the City's bonds, now outstanding which are payable from the Net Revenues of the Facilities.

## 6.4 Change in Scope

The Base Compensation shall be adjusted for any change in operating, Maintenance, Repair or other costs or expenses attributable to a change in scope ("Change in Scope") of the Facility. A Change in Scope of the Facility shall mean and include: (i) any additional services requested by the City pursuant to section 6.5; (ii) any change in plant operations due to Capital Expenditures which results in a Material Change in Cost; or (iii) Uncontrollable Circumstances. Any increase or decrease in expense shall be added to or deducted from the Base Compensation effective upon the date of the Change in Scope.

## 6.5 Additional Services

The City shall reimburse AW for any additional services and materials requested by the City for the operation and maintenance of the Facilities under this Agreement ("Additional Services"), at a rate of cost including all overhead expenses (as agreed to by the parties) plus a ten percent (10%) administration fee.

## 6.6 Dispute

In the event the City disputes any portion of an invoice, the City shall pay to AW the undisputed portion by the due date and shall provide AW with written notice of such dispute within forty five (45) days from the date the invoice is received by AW. Failure to provide such 45 day written notice of any such disputes will act as a waiver of any defense or justification for failing to pay the full amount of the invoice when due.

## ARTICLE 7. RESPONSIBILITIES OF THE CITY

### 7.1 Union Employees

The City shall provide the Union Employees for the job classifications and in the number specified in Appendix D attached hereto. The Union Employees shall be the employees of the City throughout the Term of this Agreement and the City shall be responsible for the payment of their compensation, benefits and applicable taxes. Within thirty (30) days after the close of each Contract Year, the City shall notify AW of the wages, employee retirement benefit packages and overtime paid with respect to the Union Employees during such Contract Year. Within thirty (30) days after the City notifies AW after the close of each Contract Year, AW will reimburse the City the amount, if any, equal to one hundred thirty percent (130%) of the pay for overtime for items that were within AW's control including, but not limited to, meter reading and scheduling. Overtime that is attributable to City requested assistance/projects, distribution system emergency overtime due to main breaks, and costs of employee retirement benefit packages would be paid by the City.

The amount shown herein will be adjusted annually by the percentage change in wages and overtime pay negotiated by the City with the Union and by any adjustments in Union Employee positions.

### 7.2 Future Capital Improvements

AW shall make recommendations for capital improvements that are reasonably necessary to keep the City in compliance with Applicable Law and Prudent Industry Practices. The City shall make all Capital Improvements reasonably necessary to improve and upkeep the Facility in compliance with all Applicable Laws and Prudent Industry Practices.

### 7.3 Permits

The City will assist AW in maintaining all existing licenses, permits, and agreements which have been granted to the City as owner of the Facilities.

### 7.4 Insurance

The City will maintain the following insurance during the term of this Agreement:

Property Insurance (all risks):

All Facilities, Contents,  
Equipment & Computers

Replacement Value

Commercial General Liability:

Bodily Injury and Property Damage

\$1,000,000 Occurrence

\$1,000,000 Aggregate

Personal Injury Liability

\$1,000,000

*The above policies will add AW as an Additional Insured.*

Commercial Automobile Liability:

Automobile Liability-Symbol 1	\$1,000,000 Per Accident
Comprehensive and Collision Coverages	All Vehicles used by AW

Umbrella:

Bodily Injury and Property Damage	\$1,000,000 Occurrence
	\$1,000,000 Aggregate

The City will furnish AW with a Certificate of Insurance and each policy will contain a 30-day notice of cancellation to AW.

**7.5 Representative**

The City's authorized representative will be the General Manager for the Evansville Water & Sewer Utility Board or his designee.

**7.6 Taxes**

The City shall pay all property, franchise or other taxes associated with the operation of the Facility other than taxes imposed upon AW's income and payroll. AW shall not be subject to any tax imposed on its business by the municipality in which the Facility is located, which is imposed during the Term of this Agreement.

**7.7 Warranties**

The City shall keep in force all warranties, guarantees, easements and licenses that have been granted to City and are not transferred to AW under this Agreement which are related to or necessary for AW's performance of its Basic Services.

**ARTICLE 8.  
INDEMNIFICATION**

**8.1 AW Indemnification**

AW shall indemnify and hold the City, its employees, officers, directors, agents and representatives harmless from and against all liability (including attorney fees and costs) for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of AW, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of the Basic Services, but only to the extent and in proportion to the negligence or fault of AW.

**8.2 City Indemnification**

The City shall indemnify and hold AW, its employees, officers, directors, agents and representatives harmless from and against all liability (including attorney fees and costs) for all damages of any nature whatsoever, including any bodily injury or personal damage claim and

any damage to or loss of use or loss of any personal or real property (i) which is caused by or directly attributable to the negligent or wrongful act of the City, its employees, officers, directors, agents and representatives for which it may be responsible, but only to the extent and in proportion to the negligence or fault of the City, or (ii) arising out of the presence of any hazardous, toxic or radioactive substance at or on the Facilities prior to March 3, 1997. Nothing in this provision shall operate as a waiver of the City's immunity from liability or limitation of liability pursuant to IC 34-13-3-1 et seq.

### 8.3 Damages

"Damages" will include, but not be limited to, any monetary liability resulting from any claim of noncompliance with any applicable Federal, State or Local law or regulations or any judicial or administrative order, or any action or claim for bodily injury, death, personal injury, clean up costs, property damage, workers' compensation or other compensable claims under State law.

### 8.4 Waiver

In no event shall the parties be liable to each other, and each party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.

## ARTICLE 9. UNCONTROLLABLE CIRCUMSTANCES RELIEF

Each party's performance under this Agreement will be excused if the party is unable to perform because of an Uncontrollable Circumstance. In the event of any such Uncontrollable Circumstance, the party unable to perform its obligations hereunder shall notify the other party within twenty-four (24) hours of the existence of such Uncontrollable Circumstance and shall be required to resume performance of its obligation under this Agreement upon the termination of the aforementioned Uncontrollable Circumstance. During any such Uncontrollable Circumstance, the affected party shall continue to fulfill its obligations under this Agreement on a best-efforts basis.

## ARTICLE 10. STRIKES

In the event there is any labor interruption, work slowdown or work stoppage by the Union Employees or other activity by organized labor groups, within or outside the Facilities, that prevents AW's employees from entering upon or interferes with the operation and maintenance of the Facilities ("Labor Disruption"), the City, with AW's assistance, or AW, at its own option, shall seek appropriate legal injunctions or court orders to cease and desist such Labor Disruption and restore the Facilities to normal staffing operation conditions. During any such Labor Disruption, AW shall operate the Facilities on a best efforts basis until Facilities' normal staffing operations are restored. During any Labor Disruption, the City may, but shall not be required to, engage another operator, or may use its own forces to operate and maintain the Facilities in order to maintain the safe and efficient operation of the Facilities, all of the costs of which shall be borne by the City.

## **ARTICLE 11. TERMINATION**

### **11.1 Termination for Breach**

Either party to this Agreement may terminate this Agreement upon material breach by the other party provided that such terminating party first provides written notice of such breach to the other party, and assuming that such breach is not corrected within forty-five (45) days after receipt of written notice of the breach; except in the event of (g) below, which breach is not corrected within seven (7) days after receipt of written notice of the breach. In the event of an AW breach, AW will continue to provide, in accordance with the terms of this Agreement, including AW Compensation, for the operation and maintenance of the Facilities for a period to be determined by the City, but in no case less than sixty (60) days. Material breaches include, but are not limited to, the following:

- a. operating without appropriate insurance or bonds as required in this Agreement;
- b. repetitively incurring or causing the other party to incur fines, from State or Federal agencies;
- c. submission of a fraudulent claim by either party;
- d. damage or destruction of equipment or structures at the Facilities caused by, or arising from negligence of AW or City, its officers or employees in which case termination of this Agreement and cessation of the operation and maintenance by AW of the Facilities may be immediate;
- e. causing any permit necessary for the operation of the Facilities to be canceled or not issued due to the negligence of AW or the City;
- f. failure to correct a breach within 45 days of written notice as provided above, or;
- g. nonpayment without cause of the Base Compensation by the City.

### **11.2 Bankruptcy**

If either party is adjudged a bankrupt or insolvent, or if any receiver or trustee for all or any part of the business property of either party is appointed and is not discharged within sixty (60) days after appointment, or if either party makes an assignment of its property for the benefit of creditors or files a voluntary petition in bankruptcy, or insolvency, or applies for reorganization or arrangement with its creditors under the bankruptcy or insolvency law, or if such petition is filed against either party and is not dismissed within sixty (60) days after such filing, then the other party may immediately and without notice terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

### **11.3 Termination for Convenience**

Either party may terminate this Agreement commencing on the second anniversary of the Commencement Date, and any annual anniversary date thereafter, without cause, by providing written notice to the other party one hundred twenty (120) days in advance of the anniversary date.

#### 11.4 Cooperation Upon Termination

Upon termination or expiration of this Agreement for any reason, AW will return the Facilities to the City in the same condition as they were made available to it upon the Commencement Date of this Agreement, ordinary wear and tear excepted, improvements included. AW would provide the City with copies of all computer maintenance programs for the City's future use, subject to the City entering into any necessary licensing arrangements with the software providers. If this Agreement is terminated due to AW's breach, the City will pay AW for any costs reasonably incurred up to the date AW ceases performing services, less any damages suffered by the City because of AW's breach of the terms of this Agreement. If the City's damages should exceed the amount owed to AW, then AW shall indemnify the City for such excess. AW may accept payment without prejudice to AW's right to contest any deductions made by the City. AW will not be entitled to compensation under this section until AW has delivered to the City all required financial and other documents and reports related to this Agreement.

If this Agreement is terminated due to a breach by the City, AW will be entitled to receive all payments due under this Agreement, all costs incurred in connection with the termination of its operation and maintenance of the Facilities, including, without limitation, reasonable wind down expenses, and all other amounts for which the City is liable for under law.

Upon termination of this Agreement for any reason, the City shall have the right to employ any AW employee who had provided services under this Agreement.

### ARTICLE 12. MISCELLANEOUS

#### 12.1 Governing Law

This Agreement will be governed by and interpreted in accordance with the laws of the State of Indiana. Any litigation arising from any obligation created by this Agreement will be filed in Vanderburgh Superior Court or the U.S. District Court for the district which includes Vanderburgh County.

#### 12.2 Entire Agreement

This Agreement, including all Appendices attached hereto, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties.

#### 12.3 Severability

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions will remain in full force and effect.

#### 12.4 Relationship of Parties

The City and AW agree that the only relationship created herein is one for supplying contract operations services as an independent contractor as outlined in this Agreement. AW is not an agent, employee, or joint venturer of the City and will not represent itself as such. AW has authority to act as the representative of the City in carrying out its obligations under this Agreement. No contract made by AW with any third party will create a contractual relationship between the City and said third party.

#### 12.5 Ownership

The tools, materials, Parts and Supplies, grounds, facilities, equipment, machinery, vehicles, and mowers now owned by the City or acquired by the City will remain the property of the City as well as any equipment or structures added to the Facilities, or repairs made thereto. All communication and computer hardware developed and/or installed for the operation of said Facilities and any work product developed under the Termination section of this Agreement will remain the property of the City.

Unless specifically set forth otherwise in this Agreement, any AW equipment used by AW at the Facilities during any Term of this Agreement shall remain the property of AW. The use of AW's equipment shall be at no additional cost to the City.

#### 12.6 Assignments

This Agreement may not be assigned by either party without the prior written consent of the other party unless such assignment is an approved successor of either party.

#### 12.7 Confidential Information

AW will use all reasonable effort to maintain the confidentiality of all information of the City regarding Facilities operations and to prevent the unauthorized disclosure and dissemination of any of that confidential information to any person or entity. Public records requests will be documented and submitted to the City's Authorized Representative or his designee immediately upon receipt, in order to proceed with the timely release of the necessary records. Public records requests related to personnel matters must also be submitted to the City's Personnel Director immediately upon receipt.

AW will review and obtain prior written approval from the City's Authorized Representative or his designee of all press releases, articles, or other written material about the Facilities prepared for publication by AW. Such approval will not be unreasonably withheld.

#### 12.8 Nondiscrimination

AW agrees to refrain from unlawful discrimination in employment and will undertake affirmative action to ensure a quality of employment opportunity; will comply with procedures and requirements of the Indiana Civil Rights Commission regulations concerning equal employment opportunity and affirmative action; and will provide such information, with respect to its employees and applicants for employment and assistance as the City may reasonably request.

#### 12.9 Amendments

The City, at its sole discretion, may request that AW present a proposal to the City for expanding the scope of services and length of term as described herein. AW and the City agree that this Agreement shall be amended as necessary to ensure compliance with Revenue Procedure 97-13 and the federal tax law pertaining to this Agreement.

#### 12.10 Notices

All notices will be in writing and will be delivered in person or by registered or certified mail, return receipt requested, postage prepaid. Notices required to be given to AW will be addressed to:

American Water Operations and Maintenance, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: President  
With a copy to: General Counsel

Notices required to be given to the City will be addressed to;

Evansville Water & Sewer Utility Board  
1 Northwest Martin Luther King Jr. Blvd.  
Civic Center Complex, Room 104  
P.O. Box 19  
Evansville, Indiana 47740  
Attention: Utility General Manager

Notices will be deemed received, when delivered, if delivered in person or five (5) days after mailing.

12.11 The City and AW intend that the Agreement comply, and hereby covenant to take any actions necessary so that the Agreement does in fact comply, with the provisions of Rev. Proc. 97-13 (and any successor tax law) during the term of the Agreement in order to ensure that AW's management of the City's facilities is not private business use under Section 141 of the Code.



IN WITNESS WHEREOF, the parties sign this Agreement as of the date first above written.

THE CITY OF EVANSVILLE, INDIANA

By: \_\_\_\_\_

Title: Utility Board President

Printed

Name: \_\_\_\_\_

ATTEST: \_\_\_\_\_

AMERICAN WATER OPERATIONS AND MAINTENANCE, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

ATTEST: \_\_\_\_\_

## **APPENDIX A: SCOPE OF BASIC SERVICES**

### **1. WATER PRODUCTION**

A. AW shall be responsible for managing the Facilities in accordance with Prudent Industry Practice, which includes the management, operations, Maintenance and Repair of water supply intake, water treatment, pumping of raw and finished water, operation and maintenance of booster pumping stations, operation of all storage facilities and the laboratory. AW shall manage the Facilities with the objective of producing the highest Water Quality at the most reasonable price, while improving and extending the life of the Facilities.

Specifically, AW shall be responsible for the following:

- a) Coordination, repair and operation of all water production facilities, including storage and pumping;
- b) Management of the facilities such that odor and noise are effectively controlled so as to limit disruption of adjacent neighborhoods;
- c) Supply of all chemicals required for water production operations, including, but not limited to, all required corrosion control chemicals;
- e) Assisting in the cataloguing, maintenance and updating of record drawings of the Facilities including, but not limited to, water plant, pumps, machinery, storage facilities, water supply intake and booster pumping stations;
- f) Calibration of all pump station flow meters, storage tank level indicators, chart recorders and other instrumentation on an annual basis;
- g) Management and coordination of the laboratory in order to optimize the treatment process and the analysis of samples in compliance with Applicable Law, as well as all analytical requirements associated with the Facilities;
- h) Coordination of all necessary sampling and testing;
- i) Laboratory compliance reporting;
- j) Coordination of the professional visual inspections of the interior and exterior of each elevated storage tank at a minimum of once every five years or more frequently at the City's request. AW shall provide upkeep of the tank inspection log. Upon the discovery of any Maintenance or Repair item that may potentially exceed \$5,000 AW shall notify the City within two (2) business days. of each elevated storage tank. The City shall pay for all such professional inspections, structural repairs or painting of the above ground storage tanks;
- k) Inspect remote pump stations to confirm proper pump, motor, heating/ventilation and instrumentation operation at least once a week. Inspection information will be recorded using the work order program. Upon the discovery of any Maintenance or Repair item that may potentially exceed \$5,000 AW shall notify the City within two (2) business days.

### **B. WATER QUALITY GUARANTEE**

AW will operate and maintain the Facilities in such manner that the water quality is maintained at all times at a level equal to, or better than, the requirements established by Applicable Law, including the U.S. Environmental Protection Agency (USEPA) and the Indiana Department of Environmental Management (IDEM), unless one or more of the following occurs:

1. The raw water to the treatment plant contains contaminants in quantity which cannot be removed by existing process and facilities.
2. There are toxic discharges into the raw water supply in quantities which would make compliance with water quality limits essentially impossible.
3. The demand on the Facilities becomes greater than the Water Plant design capacity, or the Water Plant's physical ability to treat the demanded quantity not due to the negligence of AW.
4. The Water Plant can operate only at a reduced capacity due to the construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond AW' control.

AW will sample and perform the appropriate water testing as prescribed by Applicable Law. Should the scope or frequency of testing change due to the City's requirements or to any Change in Law, AW and the City will negotiate in good faith to make appropriate adjustments to the Base Compensation. AW will perform the necessary laboratory analyses as required by Applicable Law and for process control. AW will prepare all monitoring and operations reports and submit them to the appropriate regulatory agency. Copies will be presented to the City.

In the event that the water quality is not in compliance with Applicable Law AW shall notify the City as soon as is practicable. AW shall follow up the initial notice of noncompliance with a written report to the City within 24 hours outlining the proposed corrective action and a schedule thereof. Additionally AW shall copy the City on all correspondence with any regulatory agency regarding the noncompliance issue.

## **2. WATER DISTRIBUTION SYSTEM.**

A. AW will operate, maintain, and manage the Water Distribution System identified to extend its useful life, to provide maximum capacities, to prevent unnecessary damage to public and private property, to minimize inconveniences by handling interruptions in service, and to prevent public health hazards. AW will provide 24- hour per day, seven days per week emergency service and will use its best efforts to maintain uninterrupted service to customers.

The Water Distribution System will be operated, maintained and managed so as to:

- identify sources of problems within the system through inspection, monitoring and investigation.
- maintain and repair system to ensure safe transportation of water throughout the system in compliance with the Safe Drinking Water Act as amended (42 U.S.C. 300f et seq.);
- provide for the purchase and installation of the New Service Equipment; and
- maintain current preventive maintenance program.

B. Specifically, AW shall be responsible for the following:

- a) Maintaining and updating distribution Facilities' operating and maintenance records, including:
  - i) Cost data on main breaks broken down by labor and material;
  - ii) Cost data on hydrant operation and Facilities flushing shall be tracked;
  - iii) Operating data on hydrants;
  - iv) Main break histories shall be tracked;
- b) Conducting a water main flushing program such that all dead end mains shall be flushed annually. More frequent flushing to address consumer complaints will be undertaken as required;
- c) Implement a fire hydrant inspection program. Inspections shall include all of the following tasks:
  - i) Checking the alignment of the hydrant;
  - ii) Checking for presence of water or ice in the barrel; thaw as necessary if ice is found;
  - iii) Lubricating operating components in accordance with manufacturer's instructions; and
  - iv) Inspecting outlet nozzle caps for thread damage;
- d) Implement a hydrant-painting program. One fifth of the hydrants in the Facilities will be painted on an annual basis such that all hydrants are painted once every five years. AW shall not be responsible for the cost of repairs or replacements to hydrants damaged during any snow emergency. AW shall document with sufficient detail as determined by the City any hydrants that have been damaged during any such snow emergency;
- e) Implement a hydrant replacement program to replace leaking and broken hydrants. All new hydrants will meet the requirements of the Evansville Water & Sewer Utility. Replacement priority shall be given to hydrants necessary to guarantee proper operation and meet fire flow demands. Broken hydrants identified by the City Fire Department as critical, as well as leaking hydrants, shall be repaired within thirty (30) days;
- f) Maintain a public phone number for emergencies that shall be staffed 24 hours per day, 365 days per year. Emergency calls will be responded to as appropriate;

- g) Maintain the water distribution facilities pressure by ensuring water production is adequate to keep pace with Facilities' demands, and by ensuring storage tank levels are operating within normal limits. AW shall maintain Facilities' hydraulics at a level equal to or better than those observed prior to the Commencement Date. AW shall use its best efforts to maintain the water distribution Facilities' pressure above 20 psi in instances of fires or main breaks. In the event that routine flushing and maintenance activities do not correct low water pressure AW shall provide the City in writing within one (1) business day a plan outlining the proposed corrective action and a schedule thereof. AW shall notify the City as soon as is practicable should pressure fall below 35 psi. at locations not previously identified. AW shall not be held responsible for failing to maintain adequate pressure in areas where the City has been notified of a problem and not yet implemented capital upgrades. Additionally AW shall copy the City on all correspondence with any regulatory agency regarding the low pressure issue.

AW shall not be responsible for the maintenance of individual property service lines.

### **3. COMPREHENSIVE MAINTENANCE PROGRAMS.**

AW will develop comprehensive preventive, predictive, scheduled, and unscheduled maintenance programs for all equipment and Facilities assigned to AW.

**Specifically, AW shall provide the following Maintenance services:**

- a) Maintain all plant and machinery required in the production and supply of water and ancillary equipment, including but not limited to, boilers;
- b) Conduct maintenance and repairs as recommended in the manufacturer's warranties;
- d) Inspection, thermographic imaging (which shall be performed annually), and thermographic inspections (which shall be performed quarterly), exercising and cleaning of electrical equipment, motors and other operating equipment as required;
- e) Inspection, cleaning and routine maintenance of all booster-pumping structures;
- f) Operation and routine maintenance of the diesel powered generator;
- g) Maintenance of all storage tanks and surrounding facilities;
- h) Maintenance for the Facilities' filters including:
  - i) Annual media depth verification in each filter and recommendations to the City for media top up as required;
  - ii) Filter coring and determination of the effective size and uniformity coefficient of the anthracite media contained in not less than 4 filters once every three Contract Years. The first sampling is to be conducted in the first Contract Year; and
  - iii) An annual visual inspection of each filter, including filter coring to inspect for mudballs and assess filter condition;
- i) Building maintenance including:

- i) Maintain all offices, restrooms and public areas in an aesthetically attractive and clean condition; and
- ii) Implement regularly scheduled pest control measures;

j) Grounds maintenance including:

- i) Mow the grass, including trimming of any edges, to maintain an attractive appearance of the Facilities;
- ii) Snow removal as needed;
- iii) Salting for safety purposes;
- iv) Periodically, prune trees to minimize interference with or damage to the Facilities or grounds during storm events; and
- v) Maintain drives, sidewalks, parking lots and pathways free of leaves and debris.

#### **4. MAINTENANCE AND REPAIR**

“Minor Maintenance and Repair” are those Maintenance and Repairs of the Facilities, equipment, buildings and grounds that are less than Five Thousand dollars (\$5,000) per incident, excluding AW or Union Employee labor. Minor Maintenance and Repair shall not include any costs associated with main breaks.

“Repair and Replacement” are those Repairs and Replacements of the Facilities, equipment, buildings and grounds that are Five Thousand dollars to Seventy Five Thousand dollars (\$5,000 - \$75,000) per incident, excluding AW or Union Employee labor.

The Minor Maintenance and Repair Allocation is that portion of the Management Fee that is designated for the payment of Minor Maintenance and Repair expenses. The Minor Maintenance and Repair Allocation for Contract Year 1 is \$794,485.00. The Minor Maintenance and Repair Allocation for each subsequent Contract Year shall be determined by agreement of the parties.

The Repair and Replacement Allocation is that fund that is designated for the payment of Repair and Replacement expenses. The Repair and Replacement Allocation for Contract Year 1 is \$700,000.00. The Repair and Replacement Allocation for each subsequent Contract Year shall be determined by agreement of the parties. AW shall obtain Utility approval prior to entering into any contracts or expending funds from the Repair and Replacement Allocation.

The Minor Maintenance and Repair and Repair and Replacement Allocations are for bench marking purposes only.

1. Within thirty (30) days after the end of each month, AW will provide the City with an accounting of the Minor Maintenance and Repair and Repair and Replacement expenses made during such month relative to year to date, including the amount of each expenditure and a description of the work performed.

2. Within sixty (60) days after the close of each Contract Year, AW will pay the City the amount, if any, by which the Minor Maintenance and Repair expenses paid by AW for such year is below the Minor Maintenance and Repair Allocation. AW is responsible for all Minor Maintenance and Repair expenses that exceed the Minor Maintenance and Repair Allocation.

**Emergency Repairs** AW may disburse amounts in excess of \$5,000 for a single Repair and require City reimbursement in the event of an emergency. An emergency Repair expense is one incurred to prevent damage to property or injury to a person, or to avoid penalties for violation of Applicable Law. AW will notify the City as soon as is practicable of any Emergency Repair.

## **5. COMMERCIAL AND CUSTOMER SERVICES**

AW shall manage the customer account and customer service departments, which shall be responsible for customer service, and metering functions, as well as necessary administrative functions.

AW shall manage the following specific activities:

- a) Service of all operational or customer accounts. AW will respond substantively in writing, or by documented phone contact, to one hundred percent (100%) of all customer service queries and complaints by the end of the following business day. AW shall additionally have a plan for resolution of such queries or complaints within two (2) business days of receipt of same.

In accordance with paragraph 5.10, by the 15<sup>th</sup> day of each month AW will provide the City with an accounting of all customer service queries and complaints and responses made during the previous month.

- b) Provide meter-reading and maintenance services, including additional meter reading required as a result of the meter installation program;
- c) Manage the replacement of 5,500 meters per year for the first Contract Year using standard settings. The number of replacements shall be determined by the parties in each subsequent Contract Year. AW shall purchase and provide the meters and associated fittings required for this purpose and shall be compensated by the City in accordance with the pricing in Schedule G. AW shall maintain an average installation rate of 460 meters per month. Thereafter, AW shall continue to schedule and perform meter installations. AW shall report regularly on the number of meters changed to date, as well as any other pertinent information, and seek the City's approval of the meter installation program. In accordance with paragraph 5.10, by the 15<sup>th</sup> day of each month AW will provide the City with an accounting of all meter installation program activity occurring during the previous month.
- d) Industrial meters (1 ½" or larger meters) shall be tested at least every four (4) years in accordance with Indiana Utility Regulatory Commission (IURC) code 170 IAC 6-1-10 as readopted July 11, 2001 or current Applicable Law.
- e) AW shall attempt to notify all affected customers and the City two (2) days prior, but in no event more than one (1) week prior, to a planned interruption of water service.

- f) AW will, in cases of reported service problems such as low pressure and poor quality, respond within twenty four (24) hours. Reporting to the City shall be in accordance with Section 2 (**WATER DISTRIBUTION SYSTEM**);
- g) AW shall submit a meter reading schedule on the Commencement Date that will be implemented within thirty (30) days of the approval of the City. The rerouting of the meter reading routes shall be managed by AW and included within the Base Fee.

**6. ADDITIONAL DUTIES WITHIN SCOPE.**

AW will provide on a timely basis, information, data, and suggested or proposed solutions to project issues consistent with the scope of AW's services described herein. AW's project director and other employees shall be available for any relevant meetings as requested or required.



## **APPENDIX B: FACILITIES DESCRIPTION**

### **Water Plant:**

Capacity, MGD —60

### **Storage Facilities:**

1.	Killian Reservoir	4.0	MG
2.	Campground Reservoir	20.0	MG
3.	Mt. Vernon Tank	0.5	MG
4.	Lincoln Tank	0.5	MG
5.	New Harmony Tank	1.0	MG
6.	Volkman Tank	1.5	MG
7.	Grimm Rd. Tank	0.5	MG

### **Water Distribution System:**

Distribution Mains, miles	989
Fire Hydrants	5039
Water Meters	
Residential	62,616
Industrial/Commercial	2,301

### **Booster Stations:**

1. Killian Pumping Station
2. Barker Pumping Station
3. First Avenue Booster Pumping Station
4. Weinbach Booster Pumping Station
5. Lincoln Pumping Station
6. Boonville Pumping Station
7. Ward Road Pumping Station
8. Stallings Pumping Station
9. Upper Campground Pumping Station

**See attached equipment list**

## **APPENDIX C: ORGANIZATION CHART**

**See attached Organization Chart**

#### APPENDIX D: LIST OF UNION EMPLOYEES

JOB CLASSIFICATION	NUMBER OF EMPLOYEES
Leadman,Laborer	5
Operator, Heavy Equipment	6
Dump Truck Driver	4
Laborer	6
Janitor/Laborer	1
Stock Clerk	1
Flasher & Barricade Maintenance	1
Leadman, Mechanic	1
Mechanic	1
Installation/Removal	4
Meter Pick-Up	2
Meter Maintenance Laborer	1
Meter Maintenance/Relief 1	1
Meter Maintenance/Relief 2	1
Night Phone Dispatcher	4
Night Emergency Truck	3
Collector/Delinquent	1
Meter Reading	10
Lead Reader/Lead Person	1

Industrial Meter Reader	2
Lead Industrial Meter Reader	1
Janitor	2
Maintenance/Relief Operator	7
Operator	4

## APPENDIX E

INTENTIONALLY OMITTED

**APPENDIX F: EXAMPLE OF AW OBLIGATION FOR  
EXCESS WAGES, OVERTIME, AND FRINGE BENEFITS**

Assume the agreed base wage and overtime value is \$2,741,213.

Also assume that AW exceeds this figure of \$2,741,213 for the calendar year 2006 and wages and overtime amount to \$2,800,000. AW's obligation to reimburse the City is calculated as follows:

Actual Wages & Overtime	2,800,000
Maximum Limit	2,741,213
Excess Wages & Overtime	58,787
Multiplier	1.30
<b>Amount Owed By AW</b>	<b>\$70,544.40</b>

## **APPENDIX G: UNIT PRICES FOR NEW SERVICES**

**See attached spreadsheet**

## APPENDIX H: EXAMPLE OF MANAGEMENT FEE ADJUSTMENT

2007 Fee	\$ 6,163,627.90
New Services	\$ 997,834.00
Chemicals	\$ 1,024,023.00
Electricity	\$ 900,000.00
Natural Gas	\$ 47,700.00
Total Allocations	\$ 2,969,557.00
Fee Minus Allocations	\$ \$3,194,070.95
CPI @ 3%	\$ 95,822.12
2008 Management Fee	\$ 3,289,893.00
Allocations (1)	\$ \$ 2,969,557.00
New Total Fee	\$ 6,259,450.00

Note:

(1) Allocations will be adjusted annually as needed.



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## **APPENDIX I: PURCHASING GUIDELINES OF EVANSVILLE WATER & SEWER UTILITY**

### **1. INTRODUCTION.**

The Evansville Water & Sewer Utility Board has adopted these guidelines to govern the purchases of goods, materials, and services by the Utility. The Utility and its Public-Private Partners are to follow these guidelines regarding the completion of purchase orders, printing price quotes and emergency authorizations. To the extent that a project is covered by the provisions of the Indiana statutes regarding Public Work Projects (I.C. 36-1-12), such purchases are exempt from these guidelines.

### **2. GENERAL PROVISIONS.**

A. Definitions. For the purpose of these guidelines, the following definitions shall apply:

1. "Emergency" shall mean a situation, which threatens injury or death to any person, damage to property, or disruption of governmental services.
2. "Materials" shall include supplies, goods, machinery, packaged software, and equipment.
3. "Public-Private Partner" shall mean the Utility's contractual management firm that operates and maintains the Utility.
4. "Purchasing Agent" shall mean the Utility general manager, director of administration, or any other official or employee of the Utility or its public-private partnership management company designated by the Utility Board as a Purchasing Agent.

"Solicitation" shall mean an invitation for bids, a request for proposals, or a request for quotes.

6. "Utility" shall mean the Water and Sewer Utility of the City of Evansville, Indiana.
7. "Utility Board" shall mean the Evansville Water & Sewer Utility Board, which is the purchasing agency having the authority to approve vouchers (claims) of the Utility.

B. Application to Public-Private Partner. The Public-Private Partner should follow these guidelines when funds are being expended for capital projects, maintenance and repair items included in the annual guaranteed amount within the management contract, or contractual services included in the annual guaranteed amount within the management contract such as consulting, engineering and architectural services.

- C. Appropriations. At the time a contract is awarded, the Utility must have a sufficient appropriation balance to cover the contract amount.
- D. Electronic Bids. Electronic Bids may be accepted if the bid notice issued the procedures for transmitting the electronic bid.

Website Notice. Notice that the Utility or its Public-Private Partner is receiving bids, quotes, or proposals should also be published on the Utility's website at least seven (7) days before the time fixed for receiving the bids, quotes, or proposals.

- (i) F. Faxed Quotes or Price Checks. Faxed offers may be considered for price checks and/or informal quotes, as long as such documents contain all the requested forms and information set forth by the Purchasing Agent. The offeror assumes the risk of malfunctioning equipment or equipment which does not deliver the fax for any reason. An offeror shall follow-up the faxed information by mailing an original document by US mail, postage pre-paid, on the same date as it is faxed.
- G. Delivery of Purchase Order/Lease to Successful Bidder. Within sixty (60) days after acceptance of a bid, quote, offer, estimate, or contract for the purchase or lease of materials, the Utility should deliver the original of each purchase order or lease to the successful bidder in person or by first class mail. The Utility should also retain a copy of the purchase order or lease for the Utility's records.
- H. Nondiscrimination Clause. Vendors submitting bids shall include a certification that they do not discriminate in regards to race, color, religion, gender, ancestry or national origin.
- I. Solicitations. A Solicitation may provide that offers will be received and contracts awarded separately for any combination of lines or classes of supplies or services. Solicitations may also provide that the Utility will award a contract for supplies or services for an unspecified or estimated number of items at a fixed price per unit and that the contract may contain a formula or method for the escalation of the unit price.
- J. Price. No quoter or bidder shall be allowed to alter or change any quote or bid prior to the award of the lowest responsible and responsive bidder. After the award, the lowest responsible and responsive bidder may negotiate terms and conditions more favorable to the Utility.
- K. Prohibited Additions. The Purchasing Agent may not accept additions to the contract that are prejudicial to the Utility or fair competition.
- L. Approved Equals. If the Specifications so provide, a bidder or quoter may submit a request for an approved equal before the deadline for approved equal submittal as stated in the Specifications.
- M. Discrepancies. If there are errors in the bid or quote, the written words shall control over numbers. Errors may be corrected by the offeror as long as the Purchasing Agent determines that such errors were unintentional, do not affect fair competition, and are corrected to the advantage of the Utility. Unit prices shall prevail over extended prices.

- N. Confidentiality. Offerors may request that certain financial information or proprietary information be kept confidential. The product bid and the price shall in all events be subject to the open record law. If such confidentiality is brought into question in any court or agency, the offeror shall defend, indemnify, and hold harmless the Utility in any such proceeding if requested by the Corporation Counsel and the Purchasing Agent.
- O. Withdrawal of Offers. An offeror may withdraw his offer at any time prior to the opening of the offer. After an offer is opened at the date and time specified, the offer may be withdrawn only upon the consent of the Purchasing Agent. To determine whether the offer may be withdrawn, the Purchasing Agent should consider any financial hardship on the offeror if it is not withdrawn or on the city if it is withdrawn, the availability of the product from another offeror, and conditions in the best interest of the Utility
- P. Cancellation or Rejection. The Purchasing Agent may cancel a solicitation or reject all offers, in whole or in part, if the Purchasing Agent determines it is in the best interest(s) of the Utility. The reason for cancellation or rejection of all offers must be a part of the contract file. The Utility may temporarily discontinue services, stop work, or alter the scope of services required.
- Q. Offers Opened After the Time Stated in Solicitation. Offers may be opened after the time stated in the Solicitation if the Agency makes a written determination that it is in the best interest of the City to delay the opening. The day, time, and place of the rescheduled opening should be announced at the date, time, and place of the originally scheduled opening or by other effective means.

3. **PURCHASES FOR WHICH ADVERTISING AND BIDDING ARE REQUIRED.**

The Purchasing Agent and / or its Public-Private Partner should advertise for bids according to the following provisions whenever the total price of each line or class of materials to be purchased directly from Utility funds is in excess of \$75,000.

- A. Specifications. When advertising for the purchase or lease of materials in excess of \$75,000, the Utility and/or its Public-Private Partner should prepare specifications describing the kind and quantity of the materials needed, while avoiding specifications that might unduly limit competition. In addition, the specifications may include one or more of the following conditions:
1. That bids will be received and contracts let, separately, for each line or class of materials.
  2. That bids will be received and contracts let for the purchase or lease of an unspecified number of items at a fixed price per unit.
  3. That bids will be evaluated on the basis of such factors as reliability, productivity, and the cost of maintenance and services.

- B. Notice. Notice of time and place for receiving of bids should be given by publication of two (2) separate notices, at least one week apart, in the Evansville Courier & Press and Our Times, or any successors to these newspapers, if available. The second publication must be made at least ten days prior to the time for the receiving of bids. In addition, the notice should be published in one (1) commercial journal unless good cause exists for not doing so. It is not necessary to include the detailed specifications in the advertised notice. A statement in the notice saying that the specifications are on file for public inspection in a specified office and/or on the Utility's web site is sufficient. The notice may not require a bidder to submit a bid before the meeting at which bids are to be received.
- C. Public Meeting. All meetings for receiving bids should be open to the public. The bids should be opened publicly and read aloud at the time and place designated in the notice.
- D. Contract Award. After a satisfactory bid is received, the Utility may award a contract to the lowest responsible and responsive bidder. When a contract is not awarded to the lowest bidder, the lowest responsible and responsive bidder must be determined, and justification for the award must be stated in the minutes at the time the award is made. A copy of the Utility minutes must be kept available for public inspection.
- E. Responsive Bidder. In determining whether a bidder is responsive, the Utility may consider the following factors:
13. Whether the bidder has submitted a bid or quotes that conforms in all material respects to the specifications.
  14. Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
  15. Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.
- F. Responsible Bidder. In determining whether a bidder is a responsible bidder, the Utility may consider the following factors:
16. The ability and capacity of the bidder to provide the materials.
  17. The integrity, character, and reputation of the bidder.
  18. The competency and experience of the bidder.
- G. Evidence of Financial Responsibility. When bids exceed \$100,000, a certified check or other evidence of financial responsibility shall be filed with each bid in the amount determined and specified by the Utility in the advertised notice. When bids are less than \$100,000, the Utility may require a bidder to file evidence of financial responsibility with each bid. The amount of the certified check or other evidence of financial responsibility may not be set at more than ten percent (10%) of the contract price. The certified check

or other evidence of financial responsibility shall be made payable to the Evansville Water & Sewer Utility.

- H. Checks of Bidders. All checks submitted by unsuccessful bidders shall be returned after the selection of successful bidders. Checks submitted by successful bidders shall be held until delivery or until completion of the contract.
- I. Use of Prescribed Forms. Each bid for a purchase or lease of materials in excess of \$75,000 must be executed on General Form No. 95 as prescribed by the Indiana State Board of Accounts. Each bid must also include a Bidder's Affidavit.
- J. Rejection of All Bids. The Utility may reject all bids and advertise for new bids. If no valid bids are received for an item, the Utility may purchase or lease that item on the open market without further advertisement for bids.

#### 4. PURCHASES EXEMPT FROM ADVERTISING AND BIDDING REQUIREMENTS.

The following types of purchases are exempt from the requirements of Article 3, and should be made in accordance with the provisions set forth below:

- A. Purchases at Least \$25,000 and Less than \$75,000. The Utility, through its general manager or its Public-Private Partner, should invite sealed quotes from at least three persons known to deal in the lines or classes of materials. In addition, the Utility, through its general manager or its Public-Private Partner, shall notify interested vendors included in the Utility vendor notification list of the availability of material specifications by mail or fax. Written quotes shall include the following:
  - 1. A non-collusion statement indicating that the bidder has not, nor has any other member, representative, or agent of the firm, company corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that the bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding; and
  - 2. A statement indicating that no person or persons, firms, or corporation has, have or will receive, directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

Sealed quotes received by the Utility's Public-Private Partner shall be opened in the presence of a member of the Utility Board. If satisfactory quotes are received, the purchase may be awarded upon Utility Board approval to the lowest responsible and responsive quote for each line or class of materials required. The Utility may reject all quotes and, if no valid quotes are received for an item, purchase or lease that item on the open market without further invitations or quotes.

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  - 1. A non-collusion statement indicating that the bidder has not, nor has any other member, representative, or agent of the firm, company corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that the bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding; and
  - 2. A statement indicating that no person or persons, firms, or corporation has, have or will receive, directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

Sealed quotes received by the Utility's Public-Private Partner shall be opened in the presence of a member of the Utility Board. If satisfactory quotes are received, the purchase may be awarded upon Utility Board approval to the lowest responsible and responsive quote for each line or class of materials required. The Utility may reject all quotes and, if no valid quotes are received for an item, purchase or lease that item on the open market without further invitations or quotes.



- B. Purchases Under \$25,000 and Over \$500. When the total price of each line or class of materials to be purchased is less than \$25,000 and over \$500, or the total rental (lease) payments on the lease of materials is less than \$25,000 and over \$500, the Utility's administrator or Public-Private Partner should obtain informal verbal quotes, informal written quotes, or three price checks from persons known to deal in that product in addition to all interested vendors included in the Utility vendor notification list. If satisfactory quotes are received, then the purchase should be awarded to the lowest responsible and responsive quote for each line or class of materials required. The Utility may reject all quotes, and if no valid quotes are received for an item, the Utility may purchase or lease that item on the open market without further invitations or quotes.
- C. Purchases Under \$500. Purchases less than or equal to \$500 do not require a price check.
- D. Emergency Purchases. The Utility general manager or public-private partner, upon declaration of emergency, may purchase or lease materials without giving notice or receiving bids, if reasonable efforts have been made under the circumstances to obtain quotes from two or more people known to deal in the materials required. The declaration of emergency along with the names of those persons invited to quote must be recorded in the minutes.
- E. Special Procurements. The Utility general manager may make, or authorize others to make, special procurements without giving notice or receiving bids under any of the following instances:
19. There exists, under emergency conditions, a threat to public health, welfare, or safety.
  20. There exists a unique opportunity to obtain supplies or services at a substantial savings to the Utility.
  21. The market structure requires the Utility to inspect and bid on the supplies to be procured.
  22. The compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the Utility's necessary requirements.
  23. The market structure is based on price but the Utility is able to receive a dollar or percentage discount of that established price.
- F. Service Contracts. Legal Counsel and the Utility Board will approve all service contracts. All service contracts over One Thousand dollars (\$1,000.00) must be in written form and reviewed by Legal Counsel before approval from the Utility Board.

**S. REQUEST FOR PROPOSALS PROCESS.**

The following procedure should be used when requesting proposals to develop specifications:

24. Proposals to develop specifications should be solicited through a request for proposals, which must include:
  - a. The factors or criteria that will be used in evaluating the proposals;
  - b. A statement concerning the relative importance of price and the other evaluation factors;
  - c. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility; and
  - d. A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification of solicitation requirements.
25. Notice of the request for proposals should be given by publication of two (2) separate notices, at least one week apart, with the second publication made at least ten days before proposals are to be received.
26. After the procedures have been completed, the resulting specifications should be let for bid in accordance with the Utility's guidelines. If expected bid is for over \$75,000 for materials it shall be advertised accordingly.
27. The Utility shall maintain a vendor notification list composed of vendors that have expressed an interest in selling specified materials. These vendors shall be notified orally, in written form, or by e-mail when specified materials are to be purchased.